

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1340 & 1341/Mds/2015

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s sun TV Network Limited,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai - 600 028.

PAN : AADCS 4885 K
(अपीलार्थी/Appellant)

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle 20(1)
(Previously Media Circle II),
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos. 1577, 1578 & 1579/Mds/2015

निर्धारण वर्ष / Assessment Years : 2005-06, 2010-11 & 2011-12

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle 20,
Chennai - 600 034.

(अपीलार्थी/Appellant)

v. M/s sun TV Network Ltd.,
(Formerly Gemini TV Pvt. Ltd.),
Murasoli Maran Towers,
73, MRC Nagar Main Road,
Mandaveli, Chennai - 600 028.

PAN : AADCS 4885 K

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Sh. N. Devanathan, Advocate

Sh. K. Ramkrishnan, CA

राजस्व की ओर से /Revenue by : Ms. Jayanthi Krishnan, CIT

सुनवाई की तारीख/Date of Hearing : 20.01.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

The assessee and the Revenue have filed appeals against the common order of the Commissioner of Income Tax (Appeals)-14, Chennai, dated 27.03.2015 pertaining to assessment years 2010-11 and 2011-12. The Revenue has also filed appeal for the assessment year 2005-06. Since common issue arises for consideration in these appeals, we heard all these appeals together and disposing of the same by this common order.

2. First, Let's take Revenue's appeals. The only issue arises for consideration is with regard to treatment of expenditure on the cost of television serial rights and feature film rights. The assessee claimed the expenditure on television serial rights and feature film rights as revenue expenditure. However, the Assessing Officer treated the same as intangible asset and allowed depreciation at the rate of 25%. However, on appeal by the assessee, the CIT(Appeals), by following the order of this Tribunal in the assessee's own case for the assessment years 2004-05 to 2009-10

in I.T.A. Nos.1515 to 1520/Mds/2013 dated 31.10.2013, allowed the claim of the assessee as revenue expenditure.

3. Ms. Jayanthi Krishnan, the Ld. Departmental Representative, submitted that the assessee-company is engaged in the business of satellite television broadcasting. The assessee earns income from broadcast fees on sale of time slots to the producers who air their own programmes. The producers earn income from advertising. According to the Ld. D.R., apart from the time slot allotted to the producers who air their programmes, the remaining time slot available for broadcasting was exploited by the assessee-company. The assessee earns income from pay channels which is subscription fees paid by cable operators. The assessee claimed the expenditure on rights to telecast the films and serials as revenue expenditure. Referring to the assessment order, the Ld. D.R. pointed out that the assessee-company has rights in the films/serials broadcast through satellite. According to the Ld. D.R., these rights are perpetual in nature, therefore, the expenditure incurred by the assessee for earning the rights in the films/serials cannot be in the nature of one referred in Sections 30 to 36 of the Income-tax Act, 1961 (in short 'the Act').

4. Referring to Section 37 of the Act, the Ld. Departmental Representative pointed out that the assessee is eligible to claim the expenditure which was wholly incurred for the purpose of business or profession. According to the Ld. D.R., the rights acquired by the assessee in the films/serials have the enduring benefit, which do not expire on the date of telecast. Referring to the contention of the assessee before the Assessing Officer that the expenditure has to be amortized in toto, the Ld. D.R. submitted that the claim of the assessee to amortise the expenditure cannot be allowed since the right in films/serials is enduring benefit. According to the Ld. D.R., even after telecasting films/serials acquired by the assessee, the rights of the assessee over such films/serials continue. The assessee itself treats the rights in the films/serials as intangible rights in the books of account for the purpose of Companies Act. Once the asset was shown as capital asset in the books of account for the purpose of Companies Act, it is obvious that the assessee is treating the rights on the films/serials as capital asset. Therefore, according to the Ld. D.R., the right on the films and serials has to be treated as capital in nature.

5. Referring to the order of this Tribunal for the earlier assessment years, which was referred by the CIT(Appeals), the Ld. D.R. submitted that no doubt, this Tribunal allowed the claim of the assessee as revenue expenditure in the earlier assessment years. However, an appeal was already filed in the High Court against the order of this Tribunal and the same is pending. The Ld. D.R. further submitted that the assessee's right over the films/serials is perpetual in nature. The assessee has conveniently chosen to claim the entire expenditure in the first year of the telecast itself and thereby creating a disparity between the income and expenditure which is against the concept of mercantile system of accounting. Referring to Accounting Standard 26, the Ld. D.R. pointed out that AS 26 specifically treats a particular asset as an intangible asset, then writing off the entire cost of the asset at the first telecast itself on the ground that the future revenue are not ascertainable with reasonable accuracy cannot be accepted. Therefore, the Ld. D.R. submitted that the expenditure incurred by the assessee on acquisition of rights in the films and serials has to be capitalized and the assessee at the best can claim only depreciation.

6. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the only issue arises for consideration is with regard to classification of expenditure incurred by the assessee for acquiring right on the films/serials. No doubt, the Assessing Officer found that the expenditure is in the capital field, as intangible asset and allowed depreciation at the rate of 25%. However, the CIT(Appeals), after referring to the decision of this Bench of the Tribunal in the assessee's own case in I.T.A. Nos.1515 to 1520/Mds/2013 dated 31.10.2013, found that the treatment of the expenditure by the Assessing Officer is not correct. The CIT(Appeals) by following the order of this Tribunal found that the treatment of expenditure by the Assessing Officer is erroneous and incorrect. The only contention of the Ld. D.R. is that an appeal is pending before the High Court. According to the Ld. D.R., mere pendency of appeal before High Court cannot be a reason for not following the decision of this Tribunal.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee engaged in the business of broadcasting through satellite. In the course of its business activity, the assessee acquired rights

over the films and serials. The assessee claims the expenditure as revenue in nature. However, the Assessing Officer found that what was acquired by the assessee is an intangible asset which has an enduring benefit to the assessee, therefore, the expenditure cannot be allowed as revenue expenditure. Accordingly, the Assessing Officer treated the expenditure as capital in nature. However, he allowed depreciation at 25%. The question arises for consideration is whether the expenditure incurred by the assessee for acquiring rights on the films/serials is revenue expenditure or capital expenditure? This Tribunal in the assessee's own case for the earlier assessment years examined this issue elaborately and found that the expenditure of similar nature has to be allowed as revenue expenditure. The CIT(Appeals), in fact, followed the order of this Tribunal. The only contention of the Ld. D.R. is that an appeal was already filed before High Court against the order of this Tribunal and the matter is pending adjudication before the higher forum. It is not the case of the Revenue that the High Court stayed the operation of the order of this Tribunal. Merely because an appeal is said to be pending before the High Court, this Tribunal is of the considered opinion that this Tribunal cannot take a different view. When the CIT(Appeals) followed the order of this Tribunal, we do not have any

reason to interfere with the orders of the lower authority. Merely because an appeal is said to be pending before the High Court, in the absence of any change of material facts during the years under consideration, this Tribunal do not find any reason to interfere with the orders of the lower authority. Accordingly, the orders of the CIT(Appeals) are confirmed. Thus, the appeals of the Revenue stand dismissed.

8. Now coming to the assessee's appeals, the only issue arises for consideration is with regard to disallowance made by the Assessing Officer under Section 14A of the Act.

9. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the assessee-company invested in subsidiary companies, namely, Kal Radio Limited, South Asia FM Limited and SUN TV Network Europe Limited. In addition to that, the assessee has also invested in mutual funds during the years under consideration. According to the Ld. counsel, the strategic investments in the subsidiary companies constitute major portion of investments of the company. Referring to Annual Report, more particularly page 41 of the Report, the Ld.counsel submitted that the available share capital with the assessee was ₹2385.7 Crores.

What was invested by the assessee in the subsidiary companies and in mutual funds was only to the extent of ₹541.11 Crores. Therefore, the assessee has not invested the borrowed funds either in the subsidiary companies or in the mutual funds. The Assessing Officer disallowed the claim of the assessee under Section 14A read with Rule 8D of the Income-tax Rules, 1962 without satisfying himself that the assessee has incurred any expenditure. Referring to Section 14A of the Act and Rule 8D of Income-tax Rules, 1962, the Ld.counsel submitted that unless and until the Assessing Officer satisfies himself that the assessee incurred the expenditure for earning income which does not form part of total income, there cannot be any disallowance under Section 14A of the Act.

10. On the contrary, Ms. Jayanthi Krishnan, the Ld. Departmental Representative, submitted that for making investment, the assessee has to necessarily incur expenditure on overheads. The assessee has to incur substantial expenditure for taking a managerial decision for making investments in mutual funds and the shares of the subsidiary companies. Therefore, the CIT(Appeals) found that Section 14A read with Rule 8D is mandatory. The assessee has generated income by making various investments,

including the investments in sister concerns. Therefore, the administrative expenses incurred by the assessee has to be disallowed as per the procedure prescribed in Rule 8D(iii). The Assessing Officer similarly disallowed proportionate interest expenses by following the procedure prescribed in Rule 8D(ii) of the Income-tax Rules, 1962. Placing her reliance on the judgment of Kerala High Court in CIT v. Smt. Leena Ramachandran (2011) 339 ITR 296, the Ld. D.R. submitted that any expenditure incurred for earning income which was not taxable under the Act cannot be allowed while computing the taxable income. Referring to Section 10(33) of the Act, the Ld. D.R. pointed out that dividend income was exempt from taxation. The dividend earned by the assessee on the shares acquired by it with borrowed funds did not constitute part of the total income. Therefore, the assessee has to necessarily disallow the expenditure incurred for earning the income which does not form part of total income.

11. The Ld. Departmental Representative has also placed her reliance on the decision of Mumbai Bench of the Tribunal in Lloyds Steel Industries Ltd. v. ACIT (2008) 20 SOT 40 and submitted that acquiring controlling interest in subsidiary companies is not part of

the business of the assessee. Therefore, the interest income earned by the assessee cannot be allowed as business expenditure.

12. We have considered the rival submissions on either side and perused the relevant material available on record. The main contention of the assessee is that the available share capital including reserves and surplus was ₹2385.7 Crores as on 31.03.2010. The available share capital is ₹1970.4 Crores and Reserves and surplus is ₹ 21,886.7 Crores. The investments made in mutual funds including subsidiary companies are only ₹541.11 Crores. Therefore, it cannot be said that the assessee has diverted the borrowed funds for making any investment either in the sister concerns or in the mutual funds. When the assessee has sufficient share capital, reserves and surplus, this Tribunal is of the considered opinion that there cannot be any disallowance towards the interest paid on the borrowed funds under Section 14A of the Act. For the purpose of disallowing interest income under Section 14A read with Rule 8D, there should be nexus between the borrowed funds and investment made by the assessee in the share capital and mutual funds. In the absence of any nexus, the

presumption is that the assessee has invested the available interest-free funds in share capital and mutual funds. Furthermore, making investment in sister concerns is for commercial expediency in view of the judgment of Apex Court in S.A. Builders Ltd. v. CIT (2007) 288 ITR 1. It is not the case of the Revenue that the sister concern or any of the Directors has misused the funds invested by the assessee. When the sister concern uses the funds only for business purpose, there was commercial expediency for making investment. Therefore, this Tribunal is of the considered opinion that there cannot be any disallowance under Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962.

13. In view of the above, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside. The entire addition made by the Assessing Officer is deleted.

14. In the result, all the three appeals of the Revenue are dismissed. However, both the appeals of the assessee are allowed.

Order pronounced on 19th February, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-14, Chennai
4. आयकर आयुक्त/CIT-10, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.